

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE

STATE OF MISSOURI ex rel. DWIGHT K. SCROGGINS, JR.,
Buchanan County Prosecuting Attorney,

Relator,

v.

THE HONORABLE DANIEL F. KELLOGG, Judge of the Circuit Court
of Buchanan County, Missouri, Division No. 4,

Respondent.

DOCKET NUMBER WD71763

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: March 9, 2010

ORIGINAL PROCEEDINGS FOR REMEDIAL WRIT OF MANDAMUS

APPELLATE JUDGES

Writ Division: Mark D. Pfeiffer, Presiding Judge, and Alok Ahuja and Karen King Mitchell, Judges

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI ex rel.)
DWIGHT K. SCROGGINS, JR.,)
Buchanan County Prosecuting)
Attorney,)
)
Relator,)
v.)
)
THE HONORABLE DANIEL F.)
KELLOGG, Judge of the Circuit Court)
of Buchanan County, Missouri, Division)
No. 4,)
)
Respondent.)

OPINION FILED:
March 9, 2010

WD71763

Buchanan County

Before Writ Division Judges: Mark D. Pfeiffer, Presiding Judge, and Alok Ahuja and Karen King Mitchell, Judges

The State of Missouri seeks a writ of mandamus ordering the Circuit Court of Buchanan County to vacate its amended judgment of July 1, 2009, in which it granted Jeffrey Cornelius's Rule 29.05 motion and modified his two 7-year sentences to be served concurrently instead of consecutively. In its writ, the State argues that the trial court lacked authority to do so. We agree.

PRELIMINARY WRIT IS MADE ABSOLUTE; TRIAL COURT ORDERED TO VACATE ITS AMENDED JUDGMENT.

Writ Division holds:

The trial court amended Cornelius's sentence approximately seven years after final judgment was rendered in his case. The trial court maintained that Rule 29.05 gave it the authority to alter the sentence. This is a misinterpretation of Rule 29.05. That rule gives a trial judge the ability to alter a

jury verdict when the verdict results in excessive punishment. The rule does not give a trial judge the authority to amend a sentence that the trial court itself imposed. In this case Cornelius pleaded guilty and a trial court, not a jury, sentenced him. Furthermore, Rule 29.05 does not give a trial court the authority to alter a final judgment. Since there was a final judgment in this case, one that in fact had occurred approximately seven years earlier, Rule 29.05 does not vest the trial court with the authority to revise Cornelius's sentence.

Finally, the Missouri Supreme Court's decision in *Webb ex rel. J.C.W. v. Wyciskalla*, 275 S.W.3d 249 (Mo. banc 2009), finding that statutory limitations on a trial court's authority do not limit its subject matter jurisdiction, does not save the trial court's action. Irrespective of whether or not the trial court possessed any remaining *jurisdiction* over the manner in which Cornelius's prison sentence was to be served is irrelevant, because the trial court clearly did not have *authority* to modify the manner in which the prison sentence was to be served. The trial court, therefore, exceeded its authority and erred in entering its amended judgment.

Based upon the foregoing, we make the preliminary writ absolute and order the trial court to vacate its amended judgment.

Opinion by: Mark D. Pfeiffer, Judge

March 9, 2010

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.